

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WALTER C. FIERS

Application No. 08/452,658

MAILED

MAY 04 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO THE EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 19, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

APPEAL BRIEF

The Appeal Brief filed on June 24, 2005 does not comply with the new rules under 37 CFR § 41.37(c), which states in-part:

. . . Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

. . . .

. . . The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . .

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

The following sections are missing from the Appeal Brief filed June 24, 2005:

- (10) **Evidence Appendix** as stated in 37 CFR § 41.37(c)(1)(ix); and
- (11) **Related Proceedings Appendix** as stated in 37 CFR § 41.37(c)(1)(x).

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

REPLY - 37 CFR § 1.111

Additionally, a reply under 37 CFR § 1.111 and request to reopen prosecution with exhibits was submitted by the appellants and received by the Office on November 23, 2005. There is no indication on the record that the examiner notified appellants as to the entry status of the reply and request to reopen prosecution. There appears to be no PALM transaction code for the reply received November 23, 2005. Clarification is required.

Accordingly, it is

ORDERED that the application is remanded to the examiner:

- (1) to hold the Appeal Brief filed on June 24, 2005, defective;
- (2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- (3) to have appropriate technical support staff member enter reply of November 23, 2005 into the PALM system to be officially of record;
- (4) to provide written notification to appellants as to the status of the amendment filed November 23, 2005, and have said notification scanned into the record; and

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(5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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